4-4-2014

State v. Tracy Appellant's Reply Brief Dckt. 40783

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 40783
	)	
v.	)	ADA COUNTY NO. CR 2012-2901
	)	
MICHAEL ROBERT TRACY,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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STATEMENT OF THE CASE

Nature of the Case

Michael Tracy appeals, contending that the State failed to demonstrate that the officers' warrantless search of his home was justified by the exigent circumstances exception to the warrant requirement. In response, the State contends that "[Mr.] Tracy has failed to demonstrate that law enforcement acted unreasonably in violation of the Fourth Amendment and Article 1, § 17 of the Idaho Constitution . . . ." (Resp. Br., p.11.) Such a position improperly switches the burdens in regard to the warrant exception. The State bears the burden to prove that the officers' action fell into one of the well-established and well-delineated exceptions, and if it fails to do so, the improperly-discovered evidence should be suppressed.

The State's argument to that effect relies primarily on the fact that the officers observed red marks on M.T. The State also argues that the officers did not need to accept Ms. Tracy's assertion that there was nothing wrong in the house. As to Ms. Tracy's assertion, officers may justifiably disregard such statements only if there are objective reasons to do so. The facts in this case, including the marks on M.T., do not demonstrate that anyone in the house was in *immediate* danger or that there was some other *urgent* reason to enter the home without a warrant – the officers had been informed that Mr. Tracy had left the residence minutes before they arrived and all the remaining residents were safely in the officers' field of view. Therefore, there is no objective reason to disregard Ms. Tracy's statement of assurance. This also means that the State has failed to meet its burden to prove that an exception to the warrant

requirement existed in this case. As a result, this Court should reverse the district court's erroneous decision to deny Mr. Tracy's motion to suppress.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Tracy's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court erred when it denied Mr. Tracy's motion to suppress.

ARGUMENT

The District Court Erred When It Denied Mr. Tracy's Motion To Suppress

A. The State Misstated And Misapplied The Burden Of Proof In This Case, As It Must Prove That The Officers' Actions Fell Within One Of The Exceptions To The Warrant Requirement; Mr. Tracy Bears No Burden To Prove The Officers' Actions Were Unreasonable

The State contends that, "[Mr.] Tracy has failed to demonstrate that law enforcement acted unreasonably in violation of the Fourth Amendment and Article 1, § 17 of the Idaho Constitution by entering his home . . . ." (Resp. Br., p.11.) This misstates, and inappropriately shifts, the relevant burden of proof. The United States Supreme Court has made the proper burdens eminently clear: "our past decisions make clear that only in 'a few specifically established and well-delineated' situations may a warrantless search of a dwelling withstand constitutional scrutiny, even though the authorities have probable cause to conduct it. *The burden rests on the State to show the existence of such an exceptional situation.*" *Vale v. Louisiana*, 399 U.S. 30, 34 (1970) (emphasis added) (internal citations omitted).

As the Idaho Supreme Court has subsequently explained:

> Searches and seizures performed without a warrant are presumptively unreasonable. To overcome the presumption, *the State bears the burden* of establishing two prerequisites. First, *the State must prove* that a 'warrantless search fell within a well-recognized exception to the warrant requirement.' Second, *the State must show* that even if the seizure is permissible under an exception to the warrant requirement, it 'must still be reasonable in light of all the other surrounding circumstances.'

State v. Diaz, 144 Idaho 300, 302 (2007) (quoting *State v. LaMay*, 140 Idaho 835, 838 (2004), and *Halen v. State*, 136 Idaho 829, 833 (2002)) (emphasis added). Thus, if the search was conducted without a warrant, *the State* must prove that an exception is applicable to the facts at issue. Mr. Tracy and other criminal defendants are not

required to "demonstrate that law enforcement acted unreasonably in violation of the Fourth Amendment and Article 1, § 17 of the Idaho Constitution by entering his home" because, by entering the home without the warrant, any such requirement has already been satisfied. *See, e.g., Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (a unanimous United States Supreme Court holding that warrantless searches "are ***per se*** **unreasonable** under the Fourth Amendment") (emphasis added).

In this case, the State has failed to meet its burden, as it has failed to demonstrate that there was an exigent circumstance in this case that justified the officers' warrantless entry into Mr. Tracy's home. Therefore, the evidence found therein should be suppressed.

B. The State Has Failed To Demonstrate That The Officers' Warrantless Entry Into Mr. Tracy's Home Was Justified By Exigent Circumstances Because The Facts Demonstrate There Was No Immediate Threat To Any Person In The Home

The State tries to justify the officers' entry into Mr. Tracy's home by relying on the fact that there were red marks on M.T. and that the officers did not have to accept Ms. Tracy's assurances that there was nothing wrong in the house. It is mistaken on both points. First, the red marks on M.T. do not demonstrate that he was in *immediate* danger, and therefore, there was no exigency created by the presence of such marks. Second, the fact that Ms. Tracy told the officers that everything was fine may only be disregarded if there are other facts reasonably demonstrating that an immediate threat may still exist. As there were no such facts in this case, particularly given the fact that officers had been informed minutes before arriving on scene that Mr. Tracy had *left the apartment*, this fact does not demonstrate that there was an immediate danger to the

people in the apartment, such that the officers were justified in warrantlessly entering the apartment.

In regard to the red marks the officers saw on M.T., they did not create exigent circumstances because they did not demonstrate an urgent or immediate reason for the officers to enter the home. The exigent circumstances exception only excuses the warrant requirement "when there is 'compelling need for official action *and no time to secure a warrant.*'" *State v. Smith*, 144 Idaho 482, 485-86 (2007) (quoting *Michigan v. Tyler*, 436 U.S. 499, 509 (1978)) (emphasis added). Thus, for this exception to be applicable, the situation must demand *urgent* action by law enforcement. *Welsh v. Wisconsin*, 466 U.S. 740, 749-50 (1984); *Smith*, 144 Idaho at 486; *State v. Robinson*, 144 Idaho 496, 499 (Ct. App. 2007). However, the State argues that, pursuant to *State v. Barrett*, 138 Idaho 290, 292 (2003), the officers' observation of an injury after a reported altercation created a risk of danger to the persons inside the home. (*See* Resp. Br., pp.7-11.)

Barrett is not so broad as the State believes because *Barrett* only authorizes warrantless entries where the totality of the circumstances show there is an urgent or immediate need to enter the house. The reason that urgent action by the officers was necessary in that case, why there was no time to secure a warrant, was because upon arriving, they "encountered Barrett in obvious distress, unable to stand, incoherent, unable to hear, and noncommunicative." *Barrett*, 138 Idaho at 294. More specifically,

> Barrett was incoherent and curled up in a fetal position. [Officer] Hosford attempted to communicate with Barrett, but Barrett did not respond to any of Hosford's inquiries, *including his inquiry as to whether other persons were in Barrett's house.* Williams [a neighbor] told Hosford that Barrett's wife, his two children, and sometimes others, lived with Barrett, and that he had not seen Barrett's wife and children all day.

Id. at 292 (emphasis added). From these facts, the officer "could not determine the nature and cause of the medical condition that had driven Barrett from his house to seek help from neighbor Williams." *Id.* at 294 (emphasis added). Therefore, there was an urgent need for officers to enter Mr. Barrett's home because "the police officers legitimately believed, *particularly in view of their inability to discern the cause of the medical condition affecting Barrett*, that the life of any occupants in Barrett's house may very well have been at stake." *Id.* at 294-95 (emphasis added). Thus, the reason there were exigent circumstances in *Barrett* is because officers knew that at least three other people lived in the home, there was no indication that they had left the home, and there was a potential medical emergency that could also have incapacitated them. *See id.* Therefore, to ensure that those other people were not in immediate danger, the warrantless entry was justified by the exigent circumstances. *Id.*

However, in situations where the other residents are accounted for, there is no such exigency. *See, e.g., State v. Reynolds*, 146 Idaho 466 (Ct. App. 2008); *State v. Rusho*, 110 Idaho 556 (Ct. App. 1986). In *Reynolds*, officers responded to a report of domestic disturbance, and when they arrived:

> [they] saw Reynolds standing just outside the front door, which was ajar. Two of the officers approached Reynolds and began to question him about the reported altercation. In the meantime, a third officer, Officer Harmon, entered the home through the partially-opened front door. He did not hear any noises coming from the house, nor did he first knock, announce his presence, or call for Melissa [the potential victim]. Upon entering, Officer Harmon saw Melissa standing in the living room about ten feet from the door.

Reynolds, 146 Idaho at 468-69. The Court of Appeals explained, "With the couple thus separated, it was apparent that if there was a woman in the house, she was under no immediate risk of harm from Reynolds while he was outside being questioned by an

officer. Therefore, there was no exigency that would justify entry into the house without first knocking or calling out to bring any occupant to the door where she could be interviewed and the situation assessed." *Id.* at 471. The Court of Appeals specifically contrasted that situation with *Barrett* on the very fact that there was no potential "*immediate* danger that would justify dispensing with some effort to bring someone to the door to be interviewed." *Id.* (emphasis from original). Therefore, Officer Harmon's initial entry into the house was not justified by the exigent circumstances exception to the warrant requirement. *Id.*

The situation in this case is more similar to *Reynolds* than to *Barrett*. Here, Ms. Tracy answered the door and was, herself, in no obvious or immediate distress. (Tr., Vol.1, p.32, L.21 - p.33, L.4 (Officer Cox testifying that Ms. Tracy appeared "casual" and not otherwise disconcerting).) The elder child that the officer could see from the doorway also demonstrated no signs of obvious or immediate distress. (Tr., Vol.1, p.35, Ls.5-7; Tr., Vol.3, p.24, Ls.19-24.) Thus, only one potential victim was unaccounted for during the officers' initial observations – M.T. However, Ms. Tracy offered to bring M.T. down and show him to the officers. (Tr., Vol.1, p.35, Ls.8-13.) As noted above, this was the proper form by which the officers should proceed, rather than entering without some indication of immediate danger to the family members. *See Reynolds*, 146 Idaho at 471. Officer Cox testified that M.T. appeared to be calm and not in immediate distress, despite the red lines on his body. (Tr., Vol.3, p.30, Ls.2-5; *see also* Tr., Vol.3, p.36, Ls.12-14 (Officer Cox testifying that she did not call for medical assistance for M.T.).) Therefore, as there was no obvious *immediate* threat to any of the three potential victims, *compare Reynolds*, 146 Idaho at 471, and since none were in obvious

medical distress, *compare Barrett*, 138 Idaho at 294, this case is more like *Reynolds* than *Barrett*. Thus, as in *Reynolds*, there was no exigency justifying the warrantless entry into Mr. Tracy's home.

Similarly, this case is more similar to *Rusho* than *Barrett*, further demonstrating why the State's reliance on *Barrett* is misplaced. In *Rusho*, Ms. Rusho left her house and went to her neighbor's house because she feared an intruder was inside her house. *Rusho*, 110 Idaho at 557.

> One of the neighbors called the police while another walked through the Rusho home, observing nothing unusual. Mrs. Rusho returned home briefly, encountered no intruder, and walked back outside. Moments later, a police officer arrived. He chatted momentarily with the neighbor and entered the house without talking to Mrs. Rusho. He found nothing. While he was still inside, a second officer arrived and began to search the house. Mrs. Rusho ran to the porch where, according to her subsequent testimony, she told the second officer, "Just forget it, there is nobody in there, just forget it." This testimony was corroborated by a neighbor who overheard the remark. . . . [T]he second officer proceeded into the house, directing Mrs. Rusho to stay outside.

Id. at 557-58. The Court of Appeals concluded that, while there had been an initial exigency triggered by the call to police, by the time the second officer moved to enter the house, "Mrs. Rusho and her children were outside the house, in no immediate danger. The first officer, a neighbor and Mrs. Rusho herself had entered the house without incident. . . . In our view, the finding that an exigency still existed was clearly erroneous. There was no compelling emergency." *Id.* at 560; *compare Barrett*, 138 Idaho at 294. The Court explained:

> even though the possibility of an intruder had not been wholly eliminated, we do not believe that such a bare possibility is sufficient to justify a warrantless, nonconsensual search. . . . Fourth amendment values would be gravely impaired if the mere report of an intruder became a license for the police to enter a home and search it without a warrant, over the homeowner's objection. A balance must be struck. We hold that such

> warrantless and nonconsensual searches are permissible only if there is probable cause to believe that an intruder exists *and it reasonably appears that persons or property are in immediate danger.*

Rusho, 110 Idaho at 560 (emphasis added); *compare Barrett* 138 Idaho at 294 (holding that, where it reasonably appeared that people inside were still in immediate danger, the warrantless entry was appropriate).

In this case, as in *Rusho*, and according to the officers' own testimony, the mother and children were both accounted for and not in any apparent immediate danger or obvious distress. Therefore, this case is more like *Rusho* than *Barrett*, and thus, as in *Rusho*, there was no exigency justifying the warrantless entry into Mr. Tracy's home. Thus, the State's reliance on *Barrett* is misplaced. This is not a situation where one person was in obvious medical distress and thus, unable to dispel the officers' concerns. Since, in this case, the facts known to the officers at the time of the warrantless entry into the house demonstrate that there was no immediate danger,[1] the State has failed to demonstrate that this exception to the warrant requirement justifies the officers' presumptively unreasonable warrantless entry into the Tracys' house.

In regard to Ms. Tracy's assurances that everything was fine, the State is correct that officers do not necessarily have to believe such assurances. (Resp. Br., pp.6-7.) However, that simple position does not give effect to the full rule. The full rule allows

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[1] While the mere possibility that Mr. Tracy had returned to the home existed, that hunch was insufficient to justify the officers' warrantless entry over Ms. Tracy's objections. *Compare Rusho*, 110 Idaho at 560. In fact, the idea that he had returned to the home in this case is particularly unreasonable in light of the totality of the circumstances, since officers had confirmed with an independent witness that Mr. Tracy had left the home mere minutes before they arrived. (Tr., Vol.3, p.41, Ls.14-17.) That evidence means the possibility of an intruder posing an immediate threat was even less likely than in *Rusho*. Thus, that factor was even less likely to give rise to an exigency in this case than it was in *Rusho.*

officers to not accept such statements when there are objective facts which justify the officers in their disbelief of the statement. For example, where the person answering the door was bloodied and officers could hear sounds of an ongoing argument, their disregard of the person's assurance that all was well was justified. *State v. Sailas*, 129 Idaho 432, 434-35 (Ct. App. 1996). Similarly, where officers arrived and observed the defendant and the victim wrestling on the floor, their disregard of the victim's assurances was justified. *State v. Pearson-Anderson*, 136 Idaho 847, 850 (Ct. App. 2001). In that same regard, where officer observed an obviously-fresh injury, when combined with the fact that victim was visibly upset, their disbelief of her statement of assurance was justified. *State v. Wiedenheft*, 136 Idaho 14, 16-17 (2001).

There were no such facts present in this case which would justify the officers' disbelief of Ms. Tracy's statements of assurance. Unlike in *Wiedenheft*, neither Ms. Tracy nor her children were visibly upset; rather, they all appeared calm and casual. (Tr., Vol.1, p.32, L.21 - p.33, L.4 (Officer Cox testifying that Ms. Tracy's appearance was casual and not otherwise disconcerting); Tr., Vol.1, p.35, Ls.5-7 (Officer Cox testifying that she observed nothing disconcerting about the elder child who was immediately visible from the doorway); Tr., Vol.3, p.30, Ls.2-5 (Officer Cox testifying that M.T. appeared calm and was not crying).) Unlike in *Sailas* or *Pearson-Anderson*, the officers did not see any ongoing fight, nor did they hear any ongoing arguments. (Tr., Vol.1, p.34, Ls.14-21; Tr., Vol.3, p.20, L.15 - p.21, L.1.) Therefore, without some fact justifying their disbelief of Ms. Tracy's statement of assurance, that statement is a factor which further demonstrates that there was no exigency in this case. As a result,

that statement further demonstrates that the officers' warrantless entry in to the house was not justified by an exception to the warrant requirement.

As such, the facts present in this case demonstrate that there was no immediate threat or other urgent need for the officers to enter Mr. Tracy's house, and thus, the State has failed to meet its burden and prove that exception to the warrant requirement justifies the officers' unreasonable, warrantless entry into that house. Because the State did not meet its burden in that regard, the evidence found during that illegal search should be suppressed. Thus, the district court's order denying Mr. Tracy's motion to suppress that evidence should be reversed.

CONCLUSION

Mr. Tracy respectfully requests that this Court reverse the district court's order denying his motion to suppress the evidence found during the officers' warrantless search of the apartment and remand this case for further proceedings.

DATED this 4th day of April, 2014.

BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of April, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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